ARKANSAS DEPARTMENT OF HUMAN SERVICES
PERFORMANCE BASED CONTRACTING

Contractor **shall** comply with the following performance-based standards which will be part of the Contract.

I. Contractor's failure to comply with Contract obligations, any applicable State and federal laws, regulations, and policies in performance of the Contract services shall be deemed insufficient and unacceptable performance.

II. During the term of the contract, the State will complete sufficient performance evaluation(s) to determine if the Contractor's performance is acceptable. The State's determination of "Acceptable Performance" as defined herein **shall** be final and controlling. In the event a Performance Standard is not met, the Contractor will have the opportunity to defend, respond to, or cure the insufficiency to the satisfaction of the State.

III. Failure to meet the minimum Performance Standards as specified may result in the assessment of damages as set forth below. At the State's sole discretion, the State may waive damages if it determines there were extenuating factors beyond the Contractor's control that hindered the performance of services if it is in the best interest of the State. Contractor **shall** follow the State's instruction regarding payment of any compensation due to the State for the assessment of damages. The damages are not exclusive and **shall** in no way exclude or limit any remedies available at law or in equity.

IV. The State **shall** have the right to modify, add, or delete Performance Standards throughout the term of the contract, should the State determine it is in its best interest to do so. Any changes or additions to performance standards will be made in good faith following acceptable industry standards and may include Contractor input so as to establish standards that are reasonably achievable.

V. Time is of the essence in this Contract. The Contractor must deliver Deliverables and meet milestones as required by the Contract or coordinate an acceptable date and time for delivery with the State. If the Contractor is not able to or does not provide the Deliverables to the State or meet milestones by the date and time set forth in the Contract or agreed upon by the parties, the State may obtain any remedy as described herein or any other remedy at law.

VI. The contract program deliverables and performance indicators to be performed by the Contractor are listed below. The following provisions **shall** apply to each deliverable and performance indicator:

1. Acceptable performance is defined as one hundred percent (100%) compliance with all service criteria and standards for acceptable performance throughout the contract term as determined by DHS.
2. Penalties will be calculated from the total payment for the month in which the deficiency took place and assessed in a future months' payment to Contractor.
3. Upon DHS request, a Corrective Action Plan (CAP) acceptable **shall** be submitted for DHS approval within ten (10) business days of the request.
4. DHS reserves the right to impose additional penalties to those stated below, including without limitation: Withholding or offset payment on future invoices until the Contractor is in full compliance; Maintaining a below standard Vendor Performance Report (VPR) in the vendor file for the Contractor; and Terminating the contract.

Service Criteria[i]	Acceptable Performance	Damages for Insufficient Performance[ii]
Compliance	Contractor is one hundred percent (100%) compliant with applicable federal and state laws; maintains active permits, licensure, and/or certificates	A $500 penalty will be assessed for the first incident of noncompliance. A $1,000 penalty will be assessed after the first incident of noncompliance. A $3,000 penalty will be assessed for the third incident and beyond for repetitive and persisting noncompliance.
Laboratory	The lab utilized for drug screens **must** be certified by SAMHSA. Contractor **shall** conduct drug screen panels as required by Section 2.4.E of the IFB.	A $500 penalty will be assessed for the first incident of noncompliance. A $1,000 penalty will be assessed after the first incident of noncompliance. A $3,000 penalty will be assessed for the third incident and beyond for repetitive and persisting noncompliance.
Specimen Collection	The contractor **shall** provide the required kit that is used for sample collection and testing, along with custody control forms, seals, and everything needed for drug screen collection, testing, confirmation, and reporting.	A $250 penalty will be assessed for non-compliant specimen collection kits.
Pick Up	Contractor **shall** arrive during designated service hours and meet all scheduled pick-up days	A $150 penalty will be assessed for each missed pickup day. More than two (2) late arrivals in a month will trigger an enhanced $300 penalty for each incident of repetitive and persisting late arrivals
Availability	1. The Contractor must provide alternative drug collection and testing access twenty-four (24)	A $150 penalty will be assessed for failure to communicate availability within the required

Service Criteria[i]	Acceptable Performance	Damages for Insufficient Performance[ii]
	hours daily, three hundred sixty-five (365) days a year, with no closure for holidays or other events, to include hair and/or blood testing at the employee's expense, if they are unable to provide a sample.	timeframe.
Testing	The Contractor **shall** conduct all testing in compliance with HIPAA, strict chain-of-custody requirements, and applicable laws. Test results **shall** be reported as "Positive" or "Negative," with negative results provided within twenty-four (24) hours and positive results within forty-eight (48) hours of drug testing and MRO review are complete. All non-negative samples **must** be sent for confirmatory testing. The Contractor **shall** confirm all initial positive screening results by re-testing the same specimen using an approved confirmatory testing methodology at the time results are obtained. The Contractor **shall** provide expert testimony and confirmation documentation as directed by DHS and at no additional cost.	DHS may impose: 1. A $150 penalty will be assessed for each failure to comply with testing performance standards. 2. Upon a third violation within a rolling twelve (12) month period, the penalty **shall** increase to $300 per occurrence. 3. Continued noncompliance may constitute a material breach subject to contract suspension or termination.
Reporting	Contractor **shall** submit a monthly report identifying the reason for testing, a summary of the result, and number of tests conducted for each category requested by DDS.	A $150 penalty will be assessed for each instance of late submission.
Performance Bond The Contractor **shall** be required to obtain performance bonds to protect the State's interest.	1. The amount of the performance bonds **shall** be one hundred percent (100%) of the annual contract price, unless the State determines that a lesser amount would	Damages **shall** be one percent (1%) per day, calculated using the annual contract amount, for each day Vendor fails to meet the Performance Bonding

Service Criteria[i]	Acceptable Performance	Damages for Insufficient Performance[ii]
	be adequate for the protection of the State. 2. The State **shall** require additional performance bond protection when a contract price is increased or modified. 3. The additional performance bond must be delivered to the Arkansas Department of Human Services Chief Procurement Officer within fourteen (14) calendar days of request. The contractor **shall** notify the State of any changes, modification, or renewals for the performance bond during the term of the contract. The performance bond documentation must be provided to the State with each required notice.	Requirements specified in Service Criteria. Failure to provide is a breach of contract and may result in immediate contract termination.
Mandated Reporting Contractor and all of its employees, agents, and all Subcontractors and Subcontractor's employees and agents **shall** comply with Ark. Code Ann. §12-18-402 (b)(10) and Ark. Code Ann. §§ 12-12-1708(a)(1)(AA). Pursuant to Act 531 of 2019, Ark. Code Ann. §12-18-402 (b)(10) and Ark. Code Ann. §§ 12-12-1708(a)(1)(AA), Contractor and all of its employees, agents, and all Subcontractors and Subcontractor's employees and agents are mandated reporters.	1. Mandated Reporter **shall** immediately make a report to the Child Abuse Hotline or the Adult Maltreatment Hotline (based on type of maltreatment), if they have reasonable cause to suspect the following while performing duties under this contract: a. A child has been subjected to child maltreatment; b. A child died as a result of child maltreatment; c. A child died suddenly and unexpectedly; or d. Observe a child being subjected to conditions or circumstances that would reasonably result in child maltreatment. or e. An endangered	For each failure to report, DHS may impose: 1 Up to a ten percent (10%) penalty will be assessed in a future months' payment to the Contractor for each failure to report. The penalty will be calculated from the total payment for the identified month the deficiency took place. 2 DHS may elect to calculate penalties/damages differently per occurrence.

Service Criteria[i]	Acceptable Performance	Damages for Insufficient Performance[ii]
	person or an impaired person has been subjected to conditions or circumstances that constitute adult maltreatment or long-term care facility resident maltreatment. 2. A privilege or contract **shall** not prevent a person from reporting maltreatment when he or she is a mandated reporter and required to report under this section. 3. An employer or supervisor of a mandated reporter **shall** not prohibit an employee or a volunteer from directly reporting maltreatment to the Hotline. 4. An employer or supervisor of a mandated reporter **shall** not require an employee or a volunteer to obtain permission or notify any person, including an employee or a supervisor, before reporting maltreatment to the Hotline.	
Conflict of Interest Mitigation During the term of this contract, the Vendor **shall** comply with the terms of the DHS Organizational or Personal Conflict of Interest provisions.	1. The Vendor **shall** disclose all actual, apparent, or potential conflicts of interest to the Department of Human Services (DHS) within five (5) days of having knowledge of them. 2. The Vendor **shall** develop a mitigation plan as requested by DHS which must be approved and accepted by DHS. 3. Any changes to the approved mitigation plan must be approved in advance by DHS.	1. A one thousand dollars ($1,000) per day for each day past five (5) days for each actual, apparent, or potential conflict of interest it fails to disclose. 2. Ten thousand dollars ($10,000) for the first failure to comply with the mitigation plan developed by the Vendor and approved by DHS. 3. Each subsequent violation of the mitigation plan **shall** be twice the amount of the immediately preceding

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		violation fine.
Transition Planning All transition activity **shall** be included in the contract price. DHS reserves the right to request submission of a Transition Plan and/or the timely delivery of any DHS data, at any time, for any reason, during the contract term	Timely submission of transition plan and/or delivery of data as required by Section 2.8 of the IFB.	A ten-thousand-dollar ($10,000) penalty will be assessed per incident / per day of Insufficient Performance. Final payment may be withheld from the vendor until all elements of the transition are satisfied as determined by DHS.
Arkansas Freedom of Information Act (Ark. Code Ann. §25-19-101 et seq.): 1. Contractor **shall** cooperate with DHS requests for information and documents that DHS requires to fulfil an Arkansas Freedom of Information Act (FOIA) request. 2. Contractor **shall** timely provide all documents in its possession or control to DHS that match the request made by DHS. 3. Contractor is subject to Arkansas FOIA law pursuant to Ark. Code Ann. §25-19-103(7)(A). 4. Contractor **shall** timely and accurately respond to FOIA requests made directly to Contractor. See Ark. Code Ann. §25-19-101 et seq. for specific requirements. For all FOIA requests received, the Contractor **shall** also notify DHS of the request at DHS.FOIA@arkansas.gov.	The Contractor **shall** respond to FOIA requests timely and accurately one hundred percent (100%) of the time. The Contractor **shall** provide information and documents to DHS upon request in the timeframe specified in the request one hundred percent (100%) of the time. DHS **shall** have sole determination as to the sufficiency of Contractor's response and provision of documents.	For each failure to meet performance standard, DHS may impose: 1. Up to a ten percent (10%) penalty will be assessed in the future months' payment to the Contractor for each failure to report. The penalty will be calculated from the total payment for the identified month the deficiency took place. DHS may elect to calculate penalties/damages differently per occurrence. 2. Contractor **shall** be responsible for any penalties, fees, and costs imposed on DHS associated with vendor's failure to timely and accurately provide the requested information and documents.

[i] Nothing in this table is intended to set forth all obligations of the Contractor under the contract. These obligations are in addition to any others imposed by the contract and applicable law.
[ii] The damages set forth are not exclusive and shall in no way exclude or limit any remedies available at law or in equity.